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No. 92-638

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

INTERNATIONAL FUNDING INSTITUTE, INC., *et al.*
Petitioners,

v.

FEDERAL ELECTION COMMISSION,
Respondent.

On Petition For a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

REPLY BRIEF IN SUPPORT OF PETITION

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REPLY BRIEF IN SUPPORT OF PETITION

THE RESTRICTION AT ISSUE DOES NOT PROMOTE POLITICAL DISCOURSE

In its Brief in Opposition, the Commission characterizes as a "finding" the Court of Appeals' conclusion that the soliciting-or-sale restriction serves to promote political discourse. Opp. 12. The Commission further asserts that Petitioners do not dispute this "finding." *Id.* The Commission is wrong in both respects.

As Judge Randolph correctly pointed out, the theory that the restriction serves to promote political

discourse was nothing more than an unsupported "assumption" made by the majority. App. 19a. Judge Randolph further observed:

> Allowing others to use contributor lists may reduce return on a political committee's investment in developing them. But we cannot be certain of this and still less can we say how much the proviso will reduce that return. If others were free to exploit the lists, the developers might increase their level of speech in order to remain the contributor's exclusive object. From the standpoint of the contributors, they might be subjected to more solicitations from others competing for their dollars, which is to say that there would be more speech without the proviso than with it. We simply do not know the true effect of the proviso and, from all that appears, neither did Congress. Under the usual intermediate scrutiny review, such uncertainty would lead to unconstitutionality.

App. 19a-20a.

Even the majority acknowledged that there existed no "finding" with regard to the effect of the restriction on the level of political discourse, asserting that under the intermediate level of scrutiny it was applying, no such finding was necessary. App. 11a.[1]

The primary justification for the restriction that the Commission proffered to the Court of Appeals—and

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[1] Thus, contrary to the Commission's argument (Opp. 17-18), the result reached by the majority in the Court of Appeals depended entirely on the applicability of an intermediate, rather than strict, level of scrutiny.

the only justification mentioned in the legislative history—was the alleged need for the restriction in order to protect the privacy of contributors. Such a need, if genuine, demonstrates that the restriction actually diminishes the level political discourse in at least one respect by effectively preventing ACPA and others from contacting the listed contributors. It also demonstrates that the practical effect of the restriction on Petitioners' freedom of expression is not, as the Commission asserts, "negligible." "That a prohibition leaves open 'more burdensome' avenues of communication does not relieve its burden on First Amendment expression." *Meyer v. Grant*, 486 U.S. 414, 424 (1988).

If the only justification for this unparalleled restriction on the right to use public information is the need to preserve the value of the information to those from whom the government obtained it, then the restriction cannot survive the strict scrutiny it deserves. This Court has stated that "[p]reventing corruption or the appearance of corruption are the *only* legitimate and compelling interests thus far identified for restricting campaign finances." *FEC v. National Conservative Political Action Committee*, 470 U.S. 480, 496-97 (1985) (emphasis added). It is for this Court to decide whether a far lesser interest will now suffice.

Respectfully submitted,

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